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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,398	06/28/2004	Maxwell Bushby		4401

24271 7590 04/21/2008  
JOHN ALEXANDER GALBREATH  
2516 CHESTNUT WOODS CT  
REISTERSTOWN, MD 21136

EXAMINER
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HICKS, ROBERT J

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
04/21/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/500,398	BUSHBY, MAXWELL
	Examiner	Art Unit
	ROBERT J. HICKS	3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 March 2008.
- 2a) This action is FINAL.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-11 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 September 2007 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 3, 2008 has been entered.

### ***Specification***

#### *37 CFR 1.77 Arrangement of application elements.*

(c) The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type.

2. The disclosure is objected to because of the following informalities: there are no section headings for the following sections as presented in the application:

- a. Background of the Invention
- b. Brief Summary of the Invention
- c. Brief Description of the Drawings
- d. Detailed Description of the Invention, and
- e. Claims

Appropriate correction is required.

### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Authorization for this examiner's amendment was given in a telephone interview with Attorney John Galbreath on March 12, 2008. The application has been amended as follows:

a. Claim 8 will read as follow: "A thermoplastic can in accordance with claim 1 hereof wherein the interference between the radially outermost extremity of the protrusion and the recess in the thin walled section of the body is in the range of 0.1 mm to 0.7 mm." (A period is placed at the end of the claim).

b. Claim 9 will read as follow: "A thermoplastic can in accordance with claim 1 hereof wherein the interference between them the lowermost surface of the protrusion and that complementary surface of the recess in the can body against which it is intended to seal is between 0.03 mm and 0.08 mm." (A period is placed at the end of the claim).

***Allowable Subject Matter***

4. Claims 1-11 are allowed as amended by the applicant. The following is an examiner's statement of reasons for allowance. The prior art discloses a thermoplastic can with thermoplastic body having a disc like top moulded with a tubular element defining the sides of the body and extending downwardly from the peripheral portions of the top; means to open the top by a user; a thermoplastic base member having an externally directed protrusion sized to engage and permanently outwardly deform a relatively thin walled recess in the radially internally facing lower peripheral portion of the body forming a permanent seal at the base of the container after filling thereof; the resistance to permanent inward deformation of the externally directed protrusion exceeding the resistance to permanent outward deformation of the thin walled recess. The prior art does not expressly disclose that the wall thickness of the lower peripheral

portion of the body both immediately above and below the thin walled recess exceeding that of the thin walled recess prior to said deformation.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

5. Applicant's arguments, see Remarks Page 6 Lines 6-11, filed March 3, 2008, with respect to the rejection of claim 1 under 103(a) over Mirasol, Jr. (USPN 3,485,436) [hereinafter Mirasol] in view of Hale (USPN 5,320,243) have been fully considered and are persuasive. The 103(a) rejection of claim 1 has been withdrawn.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited for prior art considered relevant to this application.

7. This application is in condition for allowance except for the following formal matters: the objections to the specification based on the section headings - as stated in Paragraph 2 of this office action.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. H./  
Robert J. Hicks  
Examiner, Art Unit 3781

Anthony D Stashick/  
Anthony Stashick  
Supervisory Patent Examiner, Art Unit 3781